U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7818364

Date: SEPT. 23, 2020

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a psychologist, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had satisfied only two of the ten initial evidentiary criteria for this classification, of which she must meet at least three. We subsequently dismissed the Petitioner's appeal of that decision and the matter is now before us on a motion to reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motion to reconsider.

II. MOTION REQUIREMENTS

A motion to reconsider must (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and (2) establish that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reconsider to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reconsideration, a petitioner must not only meet the formal filing requirements, but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

II. LAW

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate

international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

III. ANALYSIS

The issue before us is whether the Petitioner has established on motion that our decision to dismiss her appeal was based on an incorrect application of law or USCIS policy. The Petitioner must specify the factual and legal issues raised on appeal that were decided in error or overlooked in our initial decision.

In dismissing the appeal, we determined that the Petitioner satisfied two of the ten initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). Specifically, she submitted evidence that she had participated as a judge of the work of others in her field and authored scholarly articles in professional publications, thus satisfying the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi). We also acknowledged the Petitioner's claim that she met four additional criteria at 8 C.F.R. 204.5(h)(3), discussed the evidence relating to each, and explained why the evidence was insufficient to establish that any additional criteria had been met.

On motion, the Petitioner submits a brief repeating the same arguments she made on appeal without demonstrating how we improperly adjudicated her appeal or incorrectly applied law or policy. The Petitioner's allegations of error are limited to claims that "[r]egrettably, AAO failed to properly analyze additional evidence" submitted to establish that she also met the criteria relating to awards, membership in associations that require outstanding achievements, original contributions of major significance, and performance in a leading or critical role for organizations that have a distinguished reputation. *See* 8 C.F.R. § 204.5(h)(3)(i), (ii), (v), and (viii).

However, the Petitioner does not specify what "additional evidence" was overlooked in our adjudication of the appeal. The record reflects that the Petitioner's appeal included a completed Form I-290B, Notice of Appeal or Motion, a brief, and a copy of the Director's denial decision. The Petitioner stated in the appellate brief that she was submitting additional evidence related to the awards criterion, but the appeal did not include this or any other additional evidence.

Other than claiming that our decision overlooked this unidentified "additional evidence," the motion brief is nearly identical to the appellate brief, without any mention or discussion of our decision

dismissing the appeal. The Petitioner cannot meet the requirements of a motion to reconsider by broadly disagreeing with our conclusions; the motion must demonstrate how we erred as a matter of law or policy. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party may submit in essence, the same brief and seek reconsideration by generally alleging error in the prior decision.)

Therefore, the Petitioner has not demonstrated that our appellate decision was incorrect. We conducted a *de novo* review of the record on appeal, thoroughly analyzed the evidence before us, and ultimately concluded that the Petitioner met only two of the ten initial evidentiary criteria at 8 C.F.R. 204.5(h)(3)(i)-(x). The Petitioner has not demonstrated how we erred or demonstrated that we misapplied law or policy in analyzing the evidence before us on appeal. Accordingly, the Petitioner did not satisfy the requirements for a motion to reconsider.

In addition, the Petitioner's motion does not include the required "statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding." 8 C.F.R. § 103.5(a)(1)(iii). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

IV. CONCLUSION

For the reasons discussed above, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision.

ORDER: The motion to reconsider is dismissed.